

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

CASEY COVELLI,

Plaintiff,

v.

AVAMERE HOME HEALTH CARE, LLC,
et al.,

Defendants.

Case No. 3:19-cv-486-JR

ORDER

Michael H. Simon, District Judge.

U.S. Magistrate Judge Jolie A. Russo issued Findings and Recommendation (“F&R”) in this case on January 23, 2020. ECF 56. Judge Russo recommended that the Court grant in part and deny in part the motion to dismiss the Second Amended Complaint, filed by all Defendants except Northwest Hospice, LLC (the “Moving Defendants”). ECF 52. Specifically, Judge Russo recommended that the Court deny the motion to dismiss as to Defendant Avamere Home Health Care, LLC but grant the motion to dismiss in all other respects. The Moving Defendants timely objected to portions of the F&R (ECF 59), and Plaintiff timely responded (ECF 61). In addition, Plaintiff timely objected to portions of the F&R (ECF 58), and the Moving Defendants timely responded (ECF 60). Plaintiff then filed an unauthorized reply (ECF 62). After Plaintiff filed a

motion for leave to reply, the Court accepted Plaintiff's reply (ECF 65). The Court has reviewed all these documents.

Under the Federal Magistrates Act ("Act"), the Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). If a party files an objection to a magistrate judge's findings and recommendations, "the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.*; Fed. R. Civ. P. 72(b)(3).

In addition, for those portions of a magistrate judge's findings and recommendations to which neither party has objected, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) ("There is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate's report to which no objections are filed."); *United States. v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (holding that the court must review *de novo* magistrate judge's findings and recommendations if objection is made, "but not otherwise"). Although in the absence of objections no review is required, the Act "does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard." *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that "[w]hen no timely objection is filed," the Court review the magistrate judge's recommendations for "clear error on the face of the record."

The Court has reviewed *de novo* the Findings and Recommendation of U.S. Magistrate Judge Russo (ECF 56) and adopts them. Regarding the Motion to Dismiss Plaintiff's Second Amended Complaint, filed by all Defendants except Northwest Hospice, LLC (ECF 52), the Court denies the motion to dismiss as to Defendant Avamere Home Health Care, LLC but grants the motion in all other respects. Accordingly, this case may proceed under Plaintiff's Second

Amended Complaint against only Defendants Northwest Hospice, LLC and Avamere Home Health Care, LLC. If Plaintiff timely moves for leave to file a Third Amended Complaint, Judge Russo will review that motion, as stated in the Findings and Recommendation.

IT IS SO ORDERED.

DATED this 6th day of April, 2020.

/s/ *Michael H. Simon*
Michael H. Simon
United States District Judge